

CHAPTER 117

GOVERNMENT - STATE

SENATE BILL 19-138

BY SENATOR(S) Winter and Priola, Court, Gardner, Tate, Todd;
also REPRESENTATIVE(S) Bird, Buentello, Exum, Hooton, Kraft-Tharp, Snyder, Tipper, Becker.

AN ACT

CONCERNING BONDING REQUIREMENTS FOR CONTRACTORS THAT ARE A PARTY TO CERTAIN PUBLIC-PRIVATE INITIATIVES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Under current law, taxpayers, subcontractors, and material suppliers have payment protection on public construction projects through bonding requirements and on private construction projects through mechanic's liens, but no such payment protection exists on construction projects using a public-private partnership funding agreement.

(b) Bonding protects the public interest, tax dollars, and property owned by the taxpayers of Colorado and helps ensure that subcontractors and materials suppliers involved in the construction or repair of a public property are paid.

(2) Now, therefore, it is the intent of the general assembly to ensure that current payment and performance bonding requirements for public construction projects apply to construction projects using a public-private partnership funding agreement.

SECTION 2. In Colorado Revised Statutes, 24-105-202, **add** (4) as follows:

24-105-202. Contract performance and payment bonds - applicability.

(4) THIS SECTION APPLIES TO ALL CONSTRUCTION CONTRACTS AWARDED TO A PRIVATE ENTITY FOR CONSTRUCTION THAT IS SITUATED OR LOCATED ON PUBLICLY OWNED PROPERTY USING ANY PUBLIC OR PRIVATE MONEY OR PUBLIC OR PRIVATE FINANCING.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

SECTION 3. In Colorado Revised Statutes, 38-26-105, **amend** (1); and **add** (3) as follows:

38-26-105. Public works contractor's bond - conditions - applicability - definitions. (1) Subject to ~~the provisions of~~ subsection (2) of this section, any person, company, firm, or corporation entering into a contract for more than fifty thousand dollars with any county, municipality, or school district for the construction of any public building or the prosecution or completion of any public works or for repairs upon any public building or public works ~~shall be~~ is required before commencing work to execute, in addition to all bonds that may be required of it, a penal bond with good and sufficient surety to be approved by the board or boards of county commissioners of the county or counties, the governing body or bodies of the municipality or municipalities, or the district school board or boards, conditioned that such contractor shall at all times promptly make payments of all amounts lawfully due to all persons supplying or furnishing such person or such person's subcontractors with labor, laborers, materials, rental machinery, tools, or equipment used or performed in the prosecution of the work provided for in such contract and that such contractor will indemnify and save harmless the county, municipality, or school district to the extent of any payments in connection with the carrying out of any such contract which the county or counties, municipality or municipalities, and school district or school districts may be required to make under the law. Subcontractors, materialmen, mechanics, suppliers of rental equipment, and others may have a right of action for amounts lawfully due them from the contractor or subcontractor directly against the principal and surety of such bond. Such action for laborers, materials, rental machinery, tools, or equipment furnished or labor rendered ~~shall~~ MUST be brought within six months after the completion of the work. ~~and not afterwards.~~

(3) THIS SECTION APPLIES TO ALL CONTRACTS FOR MORE THAN FIFTY THOUSAND DOLLARS AWARDED TO A PRIVATE ENTITY FOR THE CONSTRUCTION OF ANY PUBLIC BUILDING OR THE PROSECUTION OR COMPLETION OF ANY PUBLIC WORKS OR FOR REPAIRS UPON ANY PUBLIC BUILDING OR PUBLIC WORKS THAT IS SITUATED OR LOCATED ON PUBLICLY OWNED PROPERTY USING ANY PUBLIC OR PRIVATE MONEY OR PUBLIC OR PRIVATE FINANCING.

SECTION 4. In Colorado Revised Statutes, 38-26-106, **amend** (1); and **add** (3) as follows:

38-26-106. Contractor executes bond - applicability. (1) ~~A contractor who is awarded a contract for more than fifty thousand dollars for the construction, erection, repair, maintenance, or improvement of any building, road, bridge, viaduct, tunnel, excavation, or other public works for any county, city and county, municipality, school district, or other political subdivision of the state, and a contractor who is awarded a contract for more than one hundred fifty thousand dollars for the construction, erection, repair, maintenance, or improvement of any building, road, bridge, viaduct, tunnel, excavation, or other public works for this state.~~ Before entering upon the performance of any ~~such~~ work included in the contract, A CONTRACTOR shall duly execute, deliver to, and file with the board, officer, body, or person by whom the contract was awarded a good and sufficient bond or other acceptable surety approved by the contracting board, officer, body,

or person, in a penal sum not less than one-half of the total amount payable under the terms of the contract; except that, for a public works contract having a total value of five hundred million dollars or more, a bond or other acceptable surety, including but not limited to a letter of credit, may be issued in a penal sum not less than one-half of the maximum amount payable under the terms of the contract in any calendar year in which the contract is performed. The contracting board, office, body, or person shall ensure that the contract requires that a bond or other acceptable surety, including but not limited to a letter of credit, be filed and current for the duration of the contract.

(3) THIS SECTION APPLIES TO:

(a) A CONTRACTOR WHO IS AWARDED A CONTRACT FOR MORE THAN FIFTY THOUSAND DOLLARS FOR THE CONSTRUCTION, ERECTION, REPAIR, MAINTENANCE, OR IMPROVEMENT OF ANY BUILDING, ROAD, BRIDGE, VIADUCT, TUNNEL, EXCAVATION, OR OTHER PUBLIC WORKS FOR ANY COUNTY, CITY AND COUNTY, MUNICIPALITY, SCHOOL DISTRICT, OR OTHER POLITICAL SUBDIVISION OF THE STATE;

(b) A CONTRACTOR WHO IS AWARDED A CONTRACT FOR MORE THAN ONE HUNDRED FIFTY THOUSAND DOLLARS FOR THE CONSTRUCTION, ERECTION, REPAIR, MAINTENANCE, OR IMPROVEMENT OF ANY BUILDING, ROAD, BRIDGE, VIADUCT, TUNNEL, EXCAVATION, OR OTHER PUBLIC WORKS FOR THIS STATE; AND

(c) ALL CONTRACTS FOR MORE THAN ONE HUNDRED FIFTY THOUSAND DOLLARS AWARDED BY ANY COUNTY, CITY AND COUNTY, MUNICIPALITY, SCHOOL DISTRICT, OR OTHER POLITICAL SUBDIVISION OF THE STATE TO A PRIVATE ENTITY FOR THE CONSTRUCTION, ERECTION, REPAIR, MAINTENANCE, OR IMPROVEMENT OF ANY BUILDING, ROAD, BRIDGE, VIADUCT, TUNNEL, EXCAVATION, OR OTHER PUBLIC WORKS THAT IS SITUATED OR LOCATED ON PUBLICLY OWNED PROPERTY USING ANY PUBLIC OR PRIVATE MONEY OR PUBLIC OR PRIVATE FINANCING.

SECTION 5. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 16, 2019